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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/084,975      | 03/01/2002  | Jean-Louis H. Gueret | 08048.0026-00       | 2195             |

7590

01/12/2005

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| EXAMINER |
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DOAN, ROBYN KIEU

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| ART UNIT | PAPER NUMBER |
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3732

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/084,975

Applicant(s)

GUERET, JEAN-LOUIS H.

Examiner

Robyn Doan

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1:704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on 01 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-111 is/are pending in the application.
- 4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 20-27, 33-51, 61, 62, 64-72, 75-88, 91-104 and 106-111 is/are rejected.
- 7) ☒ Claim(s) 14-16 and 55 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: Attachment C.

Continuation of Disposition of Claims: Claims withdrawn from consideration are 13,17-19,28-32,52-54,56-60,63,73,74,89,90,105 and 106.

### **DETAILED ACTION**

Applicant's Amendment filed 10/01/04 has been entered and carefully considered. Claims 1 and 43 have been amended. New claims 64-111 have been added. Claims 73-74, 89-90, 105-106 are similar to claims 29 and 31 which are read on a different species, therefore, claims 73-74, 89-90 and 105-106 are withdrawn from further consideration. Limitations of new and amended claims have not been found to be patentable over prior art of record and newly discovered prior art, therefore, claims 1-12, 20-27, 33-51, 61-62, 64-72, 75-88, 91-104 and 106-111 are rejected under the same and new ground rejections as set forth below.

#### ***Claim Rejections - 35 USC § 102***

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 9, 22-27, 33-50, 61-62, 96-98, 101-104, 107-111 are rejected under 35 U.S.C. 102(e) as being anticipated by Vasas (6508603).

With regard to claims 1-5, 9, 22-27, 33-42, 96-98, 101-104 and 107-111, Vasas discloses a mascara brush (figs. 1-4) comprising a container (22) comprising a mascara product to apply to eyelashes, a wiper (18), a handle (24) attached to an end of a stem (26), a brush portion connected to one end portion of the stem (44a), the one end of the

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stem having a longitudinal axis and a brush portion having a free end (at 42) that is not aligned with the longitudinal axis of the one end portion of the stem; the brush portion comprising a twisted wire core (44) having a left hand pitch (figs. 3-4), at least part of the core being curved such that a line tangent to the core at an axial position (see attachment A) along the core being not perpendicular to the longitudinal axis of the one end portion of the stem and a line tangent to the free end being not parallel to the longitudinal axis of the one end portion (see attachment C, also it is noted that Applicant did not specifically claimed a specific line tangent, therefore, the examiner has drawn a line of tangent to the free end being not parallel to the longitudinal axis of the one end portion); the brush portion further having bristles of different lengths (78a, 80) comprising ends defining an envelope surface being asymmetrical about a midplane of the envelope surface (see attachment B, fig. 3 the long and short bristles defining an asymmetrical surface); the brush portion is formed from a blank comprising a blank core and blank bristles defining a blank surface, an edge of the blank surface being nonrectilinear (see attachment B) and the rectilinear edge portion being outwardly concave (fig. 4). In regard to claims 43-50 and 61-62, the above apparatus is inherently seen in the existence method claims.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-8, 10-12, 20-21 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vasas.

With regard to claims 4-8, 10-12, 20-21, 51, 67-68, 83-84, 99-100, Vasas discloses a mascara brush comprising all the claimed limitations in claims 1 and 43 as discussed above except for the blank envelope surface being substantially axially, circularly symmetrical about the longitudinal axis of the core, the envelope surface and the brush portion having a maximum and a minimum cross section locating between axial ends of the envelope surface and the brush portion, the nonrectilinear edge portion being located in one of the first third and a last third of the length of the blank envelope surface. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct for the blank envelope surface being substantially axially, circularly symmetrical about the longitudinal axis of the core, the envelope surface and the brush portion having a maximum and a minimum cross section locating between axial ends of the envelope surface and the brush portion, the nonrectilinear edge portion being located in one of the first third and a last third of the length of the blank envelope surface, since such a modification would have involved a mere change in the shape of the component.

Claims 64-66, 69-72, 75-82, 85-88, 91-95 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vasas in view of Gueret '870.

With regard to claims 64-66, 69-72, 75-82, 85-88, 91-95, Vasas discloses a mascara brush comprising all the claims limitations in claims 1 and 43 as discussed above except for the envelope surface being noncylindrical proximate the free end or tapering toward the free end of the brush portion. Gueret '870 discloses a mascara brush (fig. 1e) having an envelope surface (129b) being noncylindrical proximate a free end (at 128b) of a brush portion (120). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the noncylindrical envelope surface as taught by Gueret '870 into the mascara brush of Vasas for the intended use purpose and it would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the envelope surface tapering toward the free end portion of the brush portion, since such a modification would have involved a mere change in the shape of the component.

Claims 14-16 and 55 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant has argued that Vasas does not disclose a line tangent to the free end is not parallel to the longitudinal axis of the one end portion, however, as shown in the attachment C, the line tangent that the examiner has pointed out is not parallel to the longitudinal axis of the one end portion.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Dumler is cited to show the state of the art with respect to a mascara brush.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (703) 306-9182. The examiner can normally be reached on Mon-Fri 9:30-7:00; alternate Mondays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (703) 308-2582. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

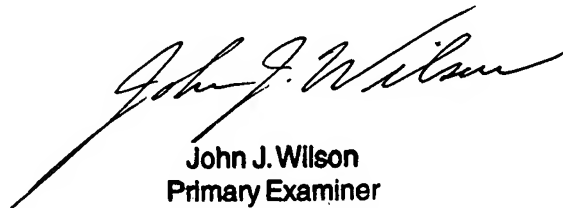


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robyn Doan  
Examiner  
January 7, 2005



John J. Wilson  
Primary Examiner